

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSKENNETH M. WHITE and
MANDY DIAS,
Plaintiffs,

vs.

ERIC MADONNA and CITY OF
FALL RIVER,
Defendants

MAGISTRATE JUDGE Alexander

C.A. No. 04-10991-NG

COMPLAINT

04 10991 NG

RECEIPT # 560007

AMOUNT \$150

SUMMONS ISSUED YES

LOCAL RULE 4.1

WAIVER FOR

MCF ISSUED

BY DPTY. CLK. F.O.M.

DATE 5/18/04

INTRODUCTION

1. This is an action for damages brought against Eric Madonna and the City of Fall River pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth and Fourteenth Amendments to the United States Constitution, and the common law of the Commonwealth of Massachusetts. Madonna is a police officer of the City of Fall River. Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1333, and the pendent jurisdiction of this Court.
2. Madonna made an unreasonable seizure of the persons of White and Dias, violating their rights under the Fourth and Fourteenth Amendments to the United States Constitution. Madonna also assaulted and battered White and Dias and falsely accused them of crimes. These violations and torts were committed under the color of Madonna's authority as a Fall River police officer.

PARTIES

3. White and Dias are and have been at all material times residents of Dighton and Fall River, Massachusetts.
4. Defendant Madonna was at all times relevant to this complaint a duly appointed officer of the City of Fall River, acting under color of statutes, ordinances, regulations, policies, customs and usages of the Commonwealth of Massachusetts and/or the City of Fall River.
5. Defendant City of Fall River, Massachusetts is a municipal corporation and the public employer of Officer Madonna.

FACTS

6. On April 27, 2002 at approximately 1:00 a.m. Defendant Madonna was accompanied by his personal friend, one James Smith and 2 female companions socializing at the Davol Café, a drinking establishment located in Fall River, Massachusetts.
7. Madonna and Smith had a dispute with one Kevin Leonardo, resulting in a fight with said Leonardo.
8. Madonna and Smith were off duty, out of uniform, and partying when they became involved in the fight with Leonardo.
9. Madonna and Smith then decided to subdue Leonardo, take him to the ground, handcuff and arrest him.
10. Not knowing that Madonna and Smith were off duty police officers, Plaintiffs White and Dias believed Madonna to be engaged in an assault on Leonardo.

By voice persuasion, each then called to Madonna to cease his apparent assault on Leonardo.

11. Madonna assaulted and arrested Plaintiffs without cause, handcuffed them and falsely accused them of assault and battery on a police officer. Madonna also falsely stated and swore that that Plaintiffs had committed criminal acts against him and the public.
12. Madonna made a knowingly false accusation and charge against Plaintiffs and falsely charged them with assault and battery and resisting arrest.
13. All of Madonna's aforesaid acts and charges were false, malicious and intended to harass and damage Plaintiffs, and to cover up his own criminal acts.

WHEREFORE, Plaintiffs claim as follows:

COUNT I
42 U.S.C. § 1983 Against Madonna

14. Paragraphs 1 through 13 are incorporated herein by reference as though fully set forth.
15. Plaintiffs claim damages against Madonna for the injuries and damages set forth above under 42 U.S.C. § 1983 for violation of their constitutional rights under color of state law.

COUNT II
Assault and Battery Against Madonna

16. Paragraphs 1 through 13 are incorporated herein by reference as though fully set forth.

17. Madonna assaulted and battered both Plaintiffs.
18. As a result of this assault and battery, Plaintiffs suffered damages.

COUNT III
False Arrest and Illegal Imprisonment Against Madonna

19. Paragraphs 1 through 13 are incorporated herein by reference as though fully set forth.
20. Madonna illegally arrested and illegally imprisoned Plaintiffs.
21. As a result of this false arrest and illegal imprisonment, Plaintiffs suffered the damages as aforesaid.

COUNT IV
Malicious Prosecution Against Madonna

22. Paragraphs 1 through 13 are incorporated herein by reference as though fully set forth.
23. Madonna falsely, wrongly and maliciously charged and prosecuted Plaintiffs for non-existent crimes.

COUNT V
Intentional Infliction of Emotional Distress Against Madonna

24. Paragraphs 1 through 13 are incorporated herein by reference as though fully set forth.
25. Madonna's acts constitute intentional infliction of emotional distress against Plaintiffs.

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COUNT VI
42 U.S.C. § 1983 Against City of Fall River

26. Paragraphs 1 through 13 are incorporated herein by reference as though fully set forth.
27. The City has maintained policies, practices, or customs exhibiting deliberate indifference to the constitutional rights of persons in the City, which caused the violation of Plaintiffs' rights.
28. It was the policy, practice, or custom of the City to fail to adequately and properly investigate citizen complaints of police misconduct, and Madonna's acts of misconduct were tolerated, ratified, and not corrected in a timely and effective manner by the City.
29. It was the policy, practice, or custom of the City to inadequately supervise and train its police officers, including Madonna thereby failing to adequately discourage further constitutional violations on the part of its police officers.
30. As a result of the above described policies, practices, or customs, police officer of the City of Fall River, including Madonna believed that their actions would not be properly monitored by supervisory officer and that misconduct would not be investigated or sanctioned, but would be tolerated.
31. Though the City is aware of Madonna's misconduct, it has not timely investigated or taken no action against him, thus ratifying his misconduct.
32. The above described policies, practices, or customs demonstrated a deliberate indifference on the part of policymakers of the City to the constitutional rights of persons within the City, and were the cause of the violation of Plaintiffs rights.

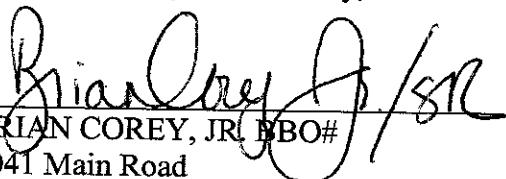
WHEREFORE, Plaintiffs claim their compensatory damages, punitive damages, attorneys' fees, together with pre-judgment and post-judgment interest.

PLAINTIFFS CLAIM TRIAL BY JURY.

The Plaintiff,
Kenneth White, By his Attorneys,
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The plaintiff,
Mandy Dias, By her Attorney,


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